

The session is wrapping up in the New Hampshire Legislature, with the House of Representatives having reviewed Senate bills (either concurring, voting against, or trying to work out a compromise), and the Senate having reviewed House bills (having done the same). The process of trying to reach a compromise between the House version of a bill and the Senate version of the same bill involves representatives from each body coming together to iron out the differences - if possible. These groups are called Committees of Conference, and either they can agree to disagree (in which case the bill dies), or they can agree on changes. I participated on two such committees, agreeing to changes to one, which dealt with the delivery of home heating oil and requiring certain consumer safeguards in the context of pre-buy contracts, and agreed to disagree on another dealing with third party lawsuits in the context of claims of unfair insurance claim settlement practices.

As you likely have heard, the proposed amendment to the New Hampshire Constitution addressing education funding (CACR 18) did not pass the NH House. There's been a fair amount of partisan discussion surrounding the amendment, so I wanted to take a moment to tell you why I did not vote for it. The amendment that came up for discussion in the House would have, among other things, recited in the Constitution the State's obligation to define an adequate education, allowed for targeted aid, and left it to the Legislature to "reasonably" allocate state funds for education (no specific level of funding was proposed in the amendment that was being discussed). While many thought it was a good compromise (it would have clarified the Legislature's obligation to determine and fund - somehow and to some degree - an adequate education, and it would have allowed targeted aid to those towns with the most need), I could not vote for the amendment for the following reason: I don't support diminishing the stature of education. The New Hampshire Supreme Court currently treats education as a fundamental right (similar to how the Court treats free speech, privacy, etc). In the context of fundamental rights, the Court will apply a heightened level of scrutiny when the State addresses those rights (ie, the State can't interfere with them unless there is a compelling reason to do so). When the Court reviews what the State does in terms of "reasonableness", however, it gives the State much more leeway and shows much more deference. Essentially, by saying the State would only need to act "reasonably" with respect to education funding, the State would have been reducing education from a fundamental right to a right of lesser value. I was not willing to do that.

So what now? The Legislature will continue to do what the Court most recently instructed - that is, define an adequate education (accomplished this session), and figure out how to fund it. That is of course the larger challenge, since right now the State does not fund the full cost of adequacy (never-mind the actual costs of education) and the local property tax payers pick up the balance. I believe the Legislature should have a full discussion of all the options that may be available to fund an adequate education. I look forward to your thoughts and input as we move forward next session on this important issue.

Until then, enjoy the summer! Regards,

Matthew Houde